

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA**

Richmond Division

ePLUS INC.,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:09CV620 (REP)
)	
LAWSON SOFTWARE, INC.,)	
)	
)	
Defendant.)	

DEFENDANT LAWSON SOFTWARE, INC.’S OPPOSITION TO ePLUS’S MOTION *IN LIMINE* TO PREVENT ADMISSION OF EVIDENCE OF INVALIDITY OF THE PATENTS IN SUIT

Defendant Lawson Software, Inc. (“Lawson”) hereby opposes ePlus Inc.’s (“ePlus”) Motion *in Limine* to Preclude the Testimony of Charles Gounaris pursuant to Federal Rules of Evidence 402, 403, and 611. For the reasons discussed below, ePlus’s motion should be denied.

As the party contending that the patents in suit are invalid, Lawson bears the burden of proving invalidity by clear-and-convincing evidence. ePlus’s present motion is an obvious attempt to prevent Lawson from even attempting to meet that burden with procedural motions not bearing on the probative value of the evidence Lawson may present. The Court should not permit such tactics.

To the extent the jury may have questions regarding the force of Ms. Eng’s testimony, Lawson certainly should be able to question an additional witness who, in addition to providing testimony on topics Ms. Eng has no knowledge of, will be able to support Ms. Eng’s testimony. If ePlus is of the position that Lawson has established that Ms. Eng’s testimony was complete and accurate, Lawson would certainly entertain a stipulation to that effect in lieu of presenting Mr. Gounaris for examination. ePlus, however, offers no such stipulation that Ms. Eng’s

testimony constitutes clear and convincing evidence, and absent that Lawson should be able to call a second witness to support and complement her testimony. ePlus should not be able to simultaneously argue that Lawson's evidence does not meet Lawson's burden and that the evidence Lawson would present is cumulative. ePlus cannot have it both ways.

Moreover, Mr. Gounaris will testify on topics that he has specialized knowledge beyond that of Ms. Eng. As an example, Mr. Gounaris is a co-author of the statements of work that are identified at PX25, PX38, and DX102. As a co-author, Mr. Gounaris can offer a perspective Ms. Eng could not. Further, Mr. Gounaris, and not Ms. Eng, was present during the initial and subsequent meetings with Fisher Scientific. Indeed, he was the IBM project leader for the Fisher electronic sourcing project who interfaced with the Fisher employees.

Further, Ms. Eng was asked questions to which she was not the person with knowledge. For example, Ms. Eng testified that she did not recall the names of the Fisher people that she worked with on the project. (Tr. at 1985:14-16.) Mr. Gounaris, and not Ms. Eng, was the IBM liaison with respect to the IBM products offered to Fisher. His perspective is clearly relevant.

ePlus should not be permitted to prevent Lawson from meeting its burden by providing direct testimony about IBM's TV/2 system. Mr. Gounaris served a different role with IBM than Ms. Eng and stands in a unique position to testify regarding various topics, including (1) the statements of work, (2) IBM's policies related to release of software, and (3) the status of the TV/2 system.

ePlus's motion to preclude Lawson from calling Mr. Gounaris to testify should be denied.

LAWSON SOFTWARE, INC.

By /s/
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CERTIFICATE OF SERVICE

I certify that on this 18th day of January, 2010, a true copy of the foregoing will be filed electronically with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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